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SUPREME COURT, U.S.
Filed June 1, 1959

No. 10, ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1953

STATE OF ARIZONA, COMPLAINANT,

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, DEFENDANTS,

STATE OF NEVADA, INTERVENER.

MOTION ON BEHALF OF THE STATE OF NEVADA FOR LEAVE TO INTERVENE

PETITION OF INTERVENTION ON BEHALF OF THE STATE OF NEVADA

W. T. MATHEWS,
Attorney General of Nevada,
ALAN BIBLE,
Special Assistant Attorney General of Nevada,
WILLIAM J. KANE,
Special Assistant Attorney General of Nevada,
GEO. P. ANNAND,
Deputy Attorney General of Nevada,
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Deputy Attorney General of Nevada,
JOHN W. BARRETT,
Deputy Attorney General of Nevada,
Counsel for State of Nevada.

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STATE OF NEVADA, INTERVENER.

MOTION ON BEHALF OF THE STATE OF NEVADA FOR LEAVE TO INTERVENE

COMES NOW the Attorney General and the Special Assistant Attorneys General of the State of Nevada and for and in behalf of said State thereunto authorized and directed by the Act of the Legislature entitled, "An Act authorizing and directing the attorney general of the State of Nevada to intervene in the suit of the State of Arizona against the State of California relative to the rights to the waters of the Colorado river pending in the supreme court of the United States, providing additional legal counsel and assistance, and making an appropriation therefor," approved March 25, 1953, and thereunto directed by the Governor of Nevada, and respectfully move this Court for leave to intervene in the above-entitled cause, and for leave to file a petition for intervention therein.

I

The State of Nevada is one of the original signers of the Colorado River Compact formulated and signed by the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, November 24, 1922, and by reason thereof became entitled to and is now entitled to an allocation of a portion of the waters of the Colorado River agreed upon in said Compact to be allocated to the Lower Basin States.

II

The Complaint of Arizona, the Answer of California and the Reply of Arizona discloses that the paramount issue in the action is the right of each said State to the use of the waters of the Colorado River, in brief, that an adjudication of such rights is and will be necessary to the final determination thereof, in that each said State seeks to have the rights which it claims in the Colorado River quieted as against the other.

III

The State of Nevada being one of the signatory States in and to the Colorado River Compact, which the Legislature of Nevada ratified January 27, 1923, in that certain resolution entitled, "Assembly Joint Resolution, relative to approving Colorado river compact," Statutes 1923, page 393, as a Seven-State Compact, and thereafter on March 18, 1925, in and by Chapter 96, Statutes 1925, ratified said Compact as a Six-State Compact and by reason of said ratifications became entitled to and is now entitled to have and to use as a matter of right its just and equitable share of the waters of said river.

IV

The State of Nevada in and by that certain Act of its Legislature entitled, "An Act relating to the Colorado river compact; waiving certain provisions of article XI thereof; agreeing to and entering into said Colorado river compact as so modified, and providing for the ratification and going into effect of said compact as so modified," approved March 18, 1925, and being Chapter 96, Statutes of

Nevada, 1925, thereby waived the provisions of the first paragraph of Article XI of the Colorado River Compact making it effective where ratified by each of the signatory States, and then and there agreeing that said Compact shall become binding when ratified by six of the signatory States and the Congress of the United States shall have given its consent thereto. Thereafter the Congress of the United States enacted the Boulder Canyon Project Act, approved December 21, 1928, 45 U. S. Statutes, page 57, and therein included Section 13(a), providing as follows:

> The Colorado River compact signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," is hereby approved by the Congress of the United States, and the provisions of the first paragraph of article 11 of the said Colorado River compact, making said compact binding and obligatory when it shall have been approved by the legislature of each of the signatory States, are hereby waived, and this approval shall become effective when the State of California and at least five of the other States mentioned, shall have approved or may hereafter approve said compact as aforesaid and shall consent to such waiver, as herein provided.

That thereafter on June 25, 1929, the President of the United States in Public Proclamation No. 1882, 46 U. S. Statutes 3000, declared that all conditions of the Boulder Canyon Project Act, including the conditions provided in Section 4(a) thereof, having been fulfilled, that said Act was then and there effective as of that date.

That from and after the 25th day of June, 1929, the State of

Nevada became entitled to its just and equitable portion and share of the waters of the Colorado River.

V

The State of Nevada is presently under a contract with the United States, dated January 3, 1944, amending a prior contract dated March 30, 1942, whereby the United States shall, from storage in Lake Mead, and pursuant to the provisions of the Colorado River Compact and the Boulder Canyon Project Act, deliver to the State each year not to exceed three hundred thousand (300,000) acre-feet of water, inclusiye of all other waters diverted for use within the State from the Colorado River Stream System. That neither the said contract with the United States of June 30, 1942, nor the contract of January 3, 1944, contains any limitation whereby the right of the State of Nevada to contract for the delivery of additional water over and above three hundred thousand (300,000) acre-feet, and neither is said State by reason of said contracts prohibited from asserting claims to the right to use of the waters of the Colorado River Stream System over and above three hundred thousand (300,000) acre-feet of water.

Therefore, the State of Nevada, applicant for intervention herein, respectfully moves the Court for leave to intervene in the action and to file therein its petition of intervention hereunto annexed, upon the following grounds:

1. That the representation of the applicant's interest by the existing parties is or may be inadequate and that the applicant is or may be bound by the judgment entered in the suit.

2. That the applicant is so situated as to be adversely affected by the final distribution of the waters of the Colorado River Stream System.

3. That the applicant's interest and the main action have questions of law and fact in common, and that its inter-

vention will not to any extent delay or prejudice the rights of the original parties.

W. T. MATHEWS,
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STATE OF NEVADA, INTERVENER.

PETITION OF INTERVENTION ON BEHALF OF THE STATE OF NEVADA

The State of Nevada, by W. T. MATHEWS, the ATTORNEY GENERAL of the STATE OF NEVADA, and by leave of Court first had and obtained, files this Petition of Intervention in the above-entitled cause, and alleges and states as follows:

PART ONE: INTRODUCTION

I

The State of Nevada refers to the several introductory statements of the States of Arizona and California and the United States of America covering the factual and historical background of the development of the Colorado River System and the basic causes of this controversy. This State deems it unnecessary to repeat the same except to state the rights and interests of Nevada in this cause. All

the parties agree that this is a controversy of considerable magnitude, affecting vast areas of land, many millions of dollars of investments growing out of the development of the Colorado River and the present and future interests of millions of people within the areas of the States concerned.

Under Article I of the Colorado River Compact the major purposes of the Compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

Nevada is an arid State, particularly in that part of the State which lies within the limits of the Colorado River System or adjacent thereto. The economic life of Nevada depends upon the careful use of stored waters and controlled rivers or streams to sustain its agricultural and industrial development. In addition to the physical use of water there is an equally imperative need for a determination of the definite legal right to the use of water to secure present rights and insure future developments.

With the advent of World War II, the industrial growth of Southern Nevada began, and its future expansion is important to this State and the Nation as a whole. It is strategically located and with ample power and water available the progress of industrial expansion, particularly in the processing of minerals, should be continued. The City of Henderson, Nevada, is the site of vast industrial plants located eighteen miles from Hoover Dam and nine miles from Lake Mead, costing over one hundred and forty million dollars. These plants with waterways and waterworks and townsite have been carefully preserved by Nevada since World War II and

are now operated by private industry and are the center of a thriving community with extensive future possibilities as an industrial area. The increase in population of Las Vegas, Nevada, the county seat of Clark County, has been steady and substantial and during the past three years is conservatively estimated at thirty-five percent. There are many thousands of acres of irrigable land in the Colorado River Basin area to be developed into profitable agricultural communities.

Note. The State of Nevada, in this petition and future pleadings, refers to and includes all the defendants under the designation California.

Note. The State of Nevada refers to the various appendixes of the States of Arizona and California and the United States of America to their pleadings on file herein and respectfully submits that the same are adequate to apprise the Court of the contents of the basic documents upon which this case is predicated.

PART TWO: THE RIGHTS AND INTERESTS OF THE STATE OF NEVADA IN AND TO THE WATERS OF THE COLORADO RIVER SYSTEM

II

The State of Nevada acts by and through the Colorado River Commission of Nevada, an official State agency created by statute and charged with the duty to receive, protect and safeguard, and hold in trust for the State of Nevada all water and water rights, interests or benefits in and to the waters of the Colorado River, and by and through the Attorney General of the State of Nevada as authorized and directed by the Act of the Nevada Legislature entitled, "An Act authorizing and directing the attorney general of the State of Nevada to intervene in the suit of the State of Arizona against the State of California relative to the rights to the waters of the Colorado River pending in the supreme court of the United States, providing additional legal counsel and assistance, and making an appropriation therefor," approved March 25, 1953, the same being Chapter 214, page 267, Statutes of Nevada, 1953.

III

The State of Arizona, by leave of this Court, filed herein its Bill of Complaint against the State of California and certain entities of that State, wherein an adjudication of the rights of Arizona and California in and to the waters of the Colorado River System are drawn in question; thereafter California filed an Answer to said Complaint, and Arizona filed its Reply thereto, California then filing its Rejoinder to said Reply; and by leave of this Court the United States was granted leave to intervene in this suit. The State of Nevada being a signatory to the Colorado River Compact, and being one of the Lower Basin States defined in said Compact and being a user of and entitled to the right to the beneficial consumptive use of a portion of the Colorado River System water is, by reasons thereof, an indispensable party to this suit and herein sets forth its claims therefor.

IV

The State of Nevada is a signatory State to the Colorado River Compact dated November 24, 1922, and a member State of the Lower Basin thereunder, and is entitled to its equitable share of the waters provided in Article III of said Compact. The State of Nevada alleges that the said Colorado River Compact as so adopted by the signatory States was intended to be and is now binding and obligatory upon each of them for the then and now indefinite future and until said Compact is terminated by the unanimous agreement of the signatory States.

V

That under Article III(a) of said Compact there is apportioned in perpetuity to the Lower Basin the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum. There is no apportionment of water under said Article III(a) to each of the several States of the Lower Basin. The State of Nevada has the right to the beneficial consumptive use of water under said Article III(a) of 539,100 acre-feet for present and future agricultural and domestic uses.

VI

(a) The State of Nevada reiterates that it is an arid State and alleges that water is the life blood of its agricultural, domestic, industrial and municipal economy, and that this is particularly true in the Colorado River Basin within said State. That within said Basin and susceptible of being irrigated by the waters of said river and tributaries are many thousands of acres of land in addition to land presently irrigated that can and will be made productive thereby; that during World War II large industrial plants employing several thousand employees were created and established by the United States in said Basin, near and adjacent to the City of Las Vegas, and that said industrial plants, since the termination of the war, have been taken over by private enterprises and the activities thereof expanded; that by reason of the establishment of the industries and the expansion thereof, increased need and use of water has been and is now imperative for the domestic use of the large increase in population thereby required, which said population in said area has increased at least thirty-five percent during the last three years.

(b) That a recent extensive engineering examination and study of the Colorado River Basin within the State of Nevada has been made and completed in the month of November 1953, for the purpose of determining the potential use of water therein through the future development of the Basin with respect to its agricultural, domestic, industrial and municipal necessities. That said examination and study projects the development of the area and the necessary use of water therefor in future to the year 2000, and determines that the amount of water necessary to insure the development of said area for the aforesaid purposes will be in the amount of not less than 539,100 acre-feet.

(c) That the separate respective areas in said Basin and the amounts of water necessary for the future development thereof are as follows:

LISTING AREAS WITHIN COLORADO RIVER DRAINAGE DEPENDENT SOLELY ON WATER FROM COLORADO RIVER AND TRIBUTARIES FOR DEVELOPMENT, AND SHOWING PRESENT USES, ESTIMATED INCREASE AND TOTAL USE OF WATER BY YEAR 2000.

Area No.[1]	Designation of Area	Water Use in Acre-Feet[2] Present use	Estimated additional use-year 2000	Total estimated use-year 2000
	COLORADO RIVER DIRECT			
12	Las Vegas Valley	[3]12,340	220,060	232,400
14	Big Bend	0	2,700	2,700
15	Fort Mohave	0	20,300	20,300
16	Dry Lake	0	115,800	115,800
	Boulder City	[4]2,600	2,400	5,000
	Subtotal	14,940	361,260	376,200
	VIRGIN RIVER			
1 & 2	Mesquite and Bunkerville	12,020	3,080	15,100
3 & 4	Below Riverside Bridge	1,700	8,300	10,000
17	Mormon Mesa	0	46,400	46,400
18	Toquop Wash	0	15,700	15,700
	Subtotal	13,270	73,480	87,200
	MUDDY RIVER			
6	Upper Moapa Valley	9,480	9,320	18,800
7	Lower Moapa Valley	14,890	6,110	21,000
	Subtotal	24,370	15,430	39,800
	MEADOW VALLEY WASH			
5	Lower Meadow Valley Wash	0	15,500	15,500
19	Upper Meadow Valley Wash	10,700	9,700	20,400
	Subtotal	10,700	25,200	35,900
	TOTAL, NEVADA	63,730	475,370	539,100

[1]Area numbers correspond to similar numbers appearing on map in Appendix "A."

[2]Water uses calculated above are based upon diversion less return flow.

[3]Indicates water presently being pumped from Lake Mead for industrial and municipal purposes at Henderson.

[4]Indicates water presently being pumped from Lake Mead for industrial and municipal use in Boulder City.

VII

The State of Nevada, signatory to the Colorado River Compact, Article III(a) and III(b) of which allocates to the Lower Basin States 8,500,000 acre-feet of water of said river, alleges; That it is informed and believes that California is presently claiming the right to use 5,362,000 acre-feet of water and the State of Arizona is presently claiming the right to use 3,800,000 acre-feet of said water; that Nevada alleges the States of Arizona and California concede Nevada has the right to the use of 300,000 acre-feet of said III(a) water per annum in perpetuity; that the Colorado River Compact apportioned to no Lower Basin State any definite amount of water and that nothing in said Compact denies Nevada the right to the beneficial consumptive use of more than said 300,000 acre-feet of water, nor does said Compact deny Nevada the right to the beneficial consumptive use of sufficient water to beneficially irrigate its lands and extend its domestic uses requiring waters far in excess of said 300,000 acre-feet; to-wit, the right to the beneficial consumptive use of 900,000 acre-feet of water per annum. The State of Nevada alleges that said 900,000 acre-feet of water consists of 539,100 acre-feet of the water apportioned to the Lower Basin in and by Article III(a) of the Colorado River Compact plus an equitable share in the water to be apportioned under Article III(b) and III(f) of the said Compact, all of which is more particularly set forth in this petition.

VIII

Article III(b) of said Compact provides that in addition to the apportionment of water in Article III(a) "the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum." No joint action by the Lower Basin States by negotiated Compact, Agreement, or by any other method has ever been initiated or taken to increase the benficial consumptive use of said water within said basin by one million acre-feet or in any other amount whatsoever. The State of Nevada alleges that before any Lower Basin State can acquire the right to use said water, authoritative concerted action by the Lower Basin States must

first be had giving the right to increase the beneficial consumptive use of water within said lower basin to the extent of an additional one million acre-feet of water as provided in said Article III(b), and that an equitable apportionment thereof to each of said States, by compact or agreement between such States, or by such other equitable action as will apportion said water is a necessary condition precedent. The State of Nevada further alleges that it is entitled to its equitable share in said water in addition to its equitable share of the water apportioned to the Lower Basin in Paragraph III(a).

IX

Under Article III(f) of the Compact, provision is made for "further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b) and (c) * * * at any time after October 1, 1963, if and when either Basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b)." The State of Nevada has a right to its equitable share of this water if and when the Lower Basin shall have reached its total beneficial consumptive use of 8,500,000 acre-feet of water as set out in Article III(a) and III(b) of the Compact.

X

That the Legislature of the State of California, pursuant to the provisions and the express requirements of Section 4(a) of the Boulder Canyon Project Act, enacted legislation known as the California Limitation Act whereby California irrevocably and unconditionally agreed and agrees with the United States, and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming, that the aggregate annual consumptive use of water of and from the Colorado River for use in California, including all uses in California under contract or otherwise, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the Lower Basin States by Article III(a) of said Compact, plus not more than one-half of any excess or surplus waters unapportioned by said Compact. The State of Nevada alleges that Article III(b)

of said Compact constitutes an apportionment of water to the Lower Basin and nowhere in said Boulder Canyon Project Act has the Congress of the United States by such legislation changed or attempted to change either the language or the meaning of said Article III(b) of said Compact so as to constitute the water therein mentioned surplus or excess water.

XI

The Boulder Canyon Project Act failed to mention the waters under Article III(b) of the Compact. Said Act proposed an apportionment between three of the Lower Basin States, to wit, Nevada, Arizona and California, of the waters under Article III(a), plus the "excess or surplus waters unapportioned by the Colorado River Compact." The States of Utah and New Mexico, signatories to the Compact, were not mentioned in said proposed apportionment. The Project Act, in authorizing agreements between the States, made all such agreements subject in all particulars to the provisions of the Colorado River Compact. The State of Nevada alleges that the tri-state agreement authorized by the Congress of the United States in Paragraph 2 of Section 4(a) of the Project Act was never entered into or consummated and by reason thereof the proposed apportionment of water between the States of Nevada, Arizona and California has never become effective and that any apportionment of water therein proposed to be made to the States of Nevada and Arizona has never been consented to nor agreed to by the State of Nevada.

PART THREE: SPECIFIC RESPONSE OF THE STATE OF NEVADA TO THE PLEADINGS OF THE PARTIES

XII

Answering Paragraph XIV of Arizona's Bill of Complaint and Paragraph 60 of California's Answer thereto, and also answering Paragraph 60 of Arizona's Reply to California's Answer, the State of Nevada admits the allegations contained in Paragraph XIV of Arizona's Complaint, admits the allegations contained in Paragraph 60 of California's Answer. The State of Nevada answering Paragraph 60 of Arizona's said Reply, alleges that it has at no time

agreed or assented with any party or parties that it was not entitled to the right to the beneficial consumptive use of the waters of the Colorado River Stream System in excess of 300,000 acre-feet of said waters per annum.

Further answering Paragraph 60 of Arizona's Reply, the State of Nevada alleges that there has been introduced in the Congress of the United States and now pending in said Congress, legislation consisting of six bills wherein the Secretary of the Interior is authorized to construct, operate and maintain within the Colorado River Basin in the State of Nevada, diversion works on and in connection with the tributaries of said river, Lake Mead and the Colorado River below Lake Mead for the furnishing of the waters thereof for irrigation, domestic, industrial and municipal purposes, far in excess of 300,000 acre-feet per annum with an estimated potential beneficial consumptive use of 900,000 acre-feet per annum. The State of Nevada, in this connection, further alleges that the recent extensive engineering examination and study wherein this potential consumptive use of said waters was projected to the year 2000, determined the use and the amount thereof to be as alleged and set forth in Paragraph VI of this Petition.

XIII

(a) Answering Paragraph XV of Arizona's Bill of Complaint, Paragraph 61 of California's Answer and Paragraph 61 of Arizona's Reply, the State of Nevada admits that portions of New Mexico and Utah are located within the Lower Basin of the Colorado River System, as defined by Article II(g) of the Colorado River Compact, and admits that in Article 7(g) of Arizona's Contract with the United States of February 9, 1944, "Arizona recognizes the rights of New Mexico and Utah to equitable shares of water apportioned by the Colorado River Compact to the Lower Basin and also water unapportioned by such Compact, and nothing in this Contract shall prejudice such rights."

(b) The State of Nevada states that it has not sufficient knowledge or information upon which to base a belief, therefore denies that Arizona expects to negotiate with New Mexico and Utah a

compact defining the respective rights of said States of New Mexico and Utah to participate as Lower Basin States in the use of Colorado River water apportioned now or as may hereafter be apportioned to said Lower Basin, and in this connection the State of Nevada alleges there is not only a potential controversy between Arizona, New Mexico and Utah concerning the apportionment of Colorado River water in and to the Lower Basin, but that such controversy extends to and will extend to the States of California and Nevada, particularly with respect to the apportionment of the water provided for in Article III(b) of the Colorado River Compact; and further answering with respect to said potential controversy, the State of Nevada alleges that no compact or agreement between the Lower Basin States relating to the apportionment of Article III(b) water can be legally consummated and made effective unless and until all of the Lower Basin States are made parties thereto.

XIV

Answering Paragraphs XVII(a) and XVII(b) of Arizona's Bill of Complaint the State of Nevada denies each, every and all of said allegations save and except that the State of Nevada admits that Arizona is not now presently beneficially consumptively using 3,800,000 acre-feet of water per annum.

Answering Paragraph 63 of California's Answer, the State of Nevada denies each, every and all of said affirmative allegations save and except that the State of Nevada admits that the share of water to which Arizona may be entitled, and to which the States of Nevada, New Mexico, and Utah are entitled, has not been determined in any manner.

As to Paragraph 63 of Arizona's Reply, State of Nevada alleges that there is available to Arizona, Nevada, New Mexico and Utah, out of the waters of the Colorado River System apportioned to the Lower Basin by Article III(a) of the Compact, the beneficial consumptive use of 3,100,000 acre-feet of water per year with the right given to the States of Arizona, California, Nevada, New Mexico and Utah to increase their beneficial consumptive use an

additional 1,000,000 acre-feet in the manner set forth in Paragraph VIII of this petition. Allege that the use of the waters of the Gila River, chargeable to Arizona, are to be charged to Arizona's apportionment of Article III(a) water. Allege that in addition said States have a right to an undetermined quantity of surplus water not yet apportioned by the Compact. Alleges that the shares of beneficial consumptive use of Colorado River System water in the Lower Basin to which Arizona, California, Nevada, New Mexico and Utah are entitled have not been fully determined and the share to which Nevada is entitled is the quantity of 539,100 acre-feet of water per annum apportioned to the Lower Basin by Article III(a) of the Compact, plus an equitable apportionment of the water apportioned to the Lower Basin by III(b) of the Compact, plus an undetermined quantity of surplus water not apportioned by the Compact.

Denies all allegations of Paragraph 63 of Arizona's Reply not specifically admitted herein.

XV

Answering Paragraph XVIII of Arizona's Complaint, Paragraph 64 of California's Answer and Paragraph 64 of Arizona's Reply, the State of Nevada alleges that Article VII of the Compact provides that nothing herein shall be construed as affecting the obligations of the United States of America to Indian Tribes. The State of Nevada alleges all beneficial consumptive uses in Arizona, California, Nevada, New Mexico and Utah of Colorado River System water by Indians is chargeable to the share of Colorado River System water to which each of said States is legally entitled. Denies all the allegations of the above paragraphs not specifically admitted herein.

XVI

Answering Paragraph XX of Arizona's Complaint, Paragraph 66 of California's Answer, and Paragraph 66 of Arizona's Reply, the State of Nevada admits that at the request of Arizona the United States Bureau of Reclamation has investigated a project to

bring water to Central Arizona from the main stream of the Colorado River and that such project is known as the Central Arizona Project and further admits that bills were introduced into the 81st and 82d Congresses authorizing the Central Arizona Project and such bills were passed by the United States Senate, but failed to pass in the House of Representatives, admits that the House of Representatives Committee on Interior and Insular Affairs adopted resolutions as set forth on page 70 of California's Answer. The State of Nevada denies the claim of title of Arizona to the beneficial consumptive annually use of 3,800,000 acre-feet of water (subject to the rights of New Mexico and Utah) of the Colorado River System, as set forth in the last sentence of Paragraph XX of Arizona's Complaint. The State of Nevada alleges that the rights of Nevada in said 3,800,000 acre-feet of water are as set forth in this Petition of Intervention. The State of Nevada has not sufficient knowledge or information upon which to base a belief as to the other allegations in said Paragraphs XX of Arizona's Complaint and 66 of California's Answer and Arizona's Reply and therefore denies the same.

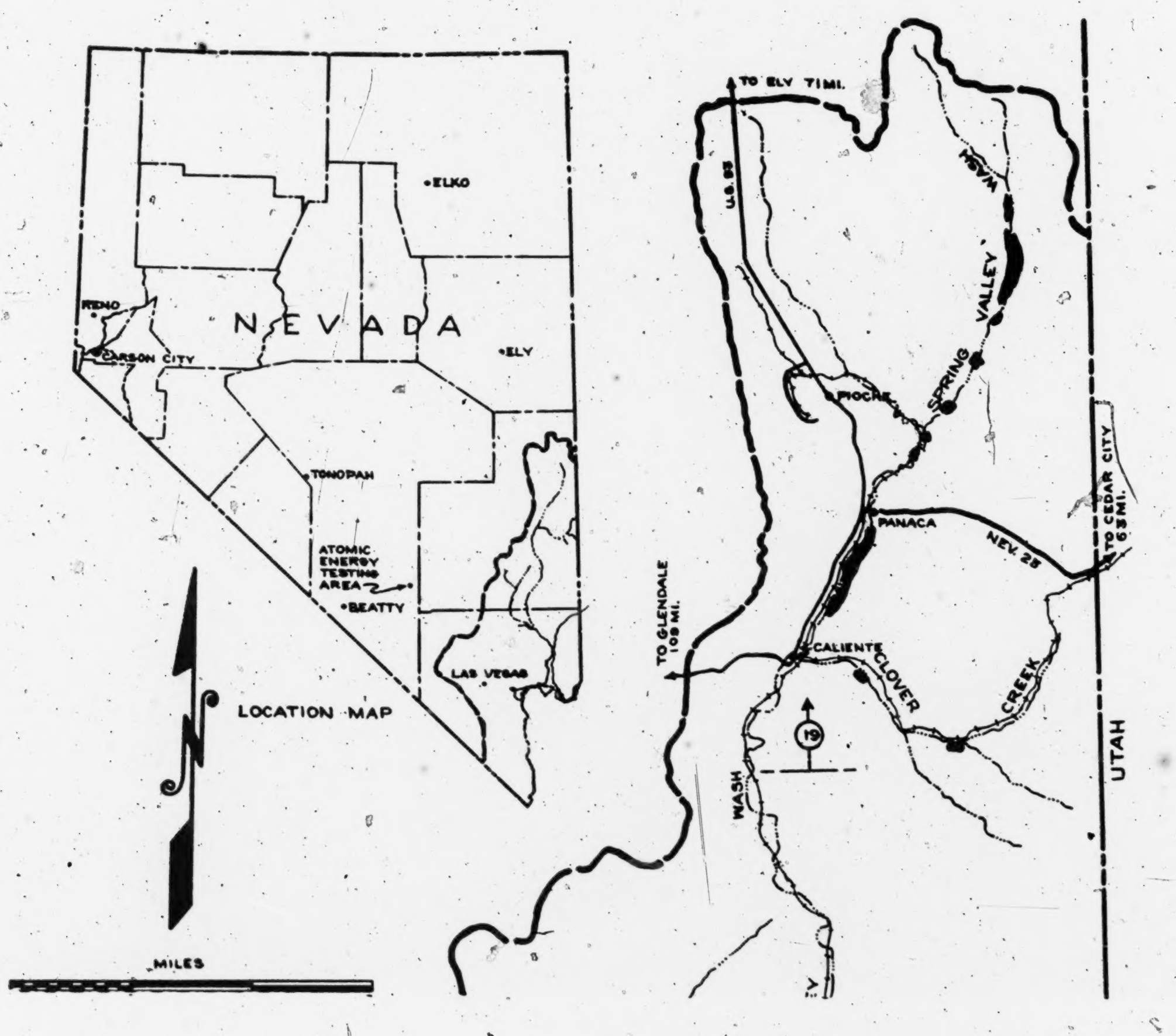
XVII

Answering Paragraphs XXI of Arizona's Complaint and 67 of California's Answer, the State of Nevada states it has not sufficient knowledge or information upon which to base a belief and therefore denies the allegations therein contained.

XVIII

Answering Paragraph XXII of Arizona's Bill of Complaint and Paragraph 68 of California's Answer thereto, the State of Nevada admits that there is a controversy between Arizona, California and Nevada relative to the construction and application of the Colorado River Compact, the Boulder Canyon Project Act, and the California Limitation Act as follows:

1. Is the water referred to and affected by Article III(b) of the Compact apportioned or unapportioned water? The State of Nevada admits all and singular the allegations contained in Subdivision No. 1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PIOCHE
PANACA
NEV. 25
TO CEDAR CITY 63MI.
TO GLENDALE 108 MI.
CALIENTE
CLOVER CREEK
19
UTAH

of said Paragraph XXII of said Complaint, save and except that when the States of the Lower Basin by authoritative, concerted action shall have increased their right to the beneficial consumptive use of the waters apportioned in and by Article III(a) by one million acre-feet of water as provided in Article III(b), that California would then be entitled to its equitable share thereof; the State of Nevada further alleges that Article III(b) water does not constitute surplus and excess water within the meaning of the Colorado River Compact, nor Section 4(a) of the Boulder Canyon Project Act.

2. How is beneficial consumptive use to be measured? The State of Nevada agrees that the Colorado River Compact does not apportion the water among the Lower Basin States, but that it serves to apportion the beneficial consumptive use thereof, and Nevada agrees that the Compact contains no definition of any method of measuring beneficial consumptive use. However, the State of Nevada alleges that the measure of beneficial consumptive use of the waters of the Colorado River Stream System is the commonly recognized measure in the Western States including Nevada, to wit: Beneficial consumptive use is the measured diversion from the source less the measured return flow thereof to said source, save and except, the State of Nevada alleges that there is an exception to the application of the rule of diversion less return flow, in that there are certain claimed tributaries to the Colorado River below Lee Ferry and in the Lower Basin of said river, wherein some of the waters thereof, in a state of nature and prior to the works of man, never reached the main stream of the Colorado River because of the fact that such tributaries were wasting streams due to channel losses occasioned by evaporation and transpiration, but which a portion of said losses were converted to beneficial purposes by the activities of man by impounding, pumping and diversion of said waters upstream from the area wherein the major losses by evaporation and transpiration took place, in which event the measure of beneficial consumptive use is by the main stream depletion theory, to wit, the tributaries to be charged only with the quantity of water which constitutes the

depletion of such tributaries at their confluence with the main stream, brought about by the activities of man.

The State of Nevada further alleges that in reference to losses by evaporation and transpiration under virgin conditions on the main stream of the Colorado River in the Lower Basin, that when such losses are salvaged by the activities of man and placed to beneficial use, the amount of such salvage is not a charge against the apportionment of Colorado River water to the State wherein such salvage is made, i. e., the amount of salvaged water is deductible from the total beneficial consumptive use as measured by the rule of diversions less return flow.

3. How are evaporation losses from Lower Basin stream storage reservoirs to be charged? The State of Nevada alleges that evaporation losses of water from storage reservoirs on the main stream of the Colorado River in the Lower Basin are first chargeable out of excess or surplus water and that such evaporation losses are not chargeable against Article III(a) or III(b) waters unless and until all such available excess or surplus water is exhausted in any given year.

XIX

Answering Paragraph XXV of Arizona's Bill of Complaint, the State of Nevada admits that the Congress of the United States stated in Section 4(a) of the Project Act what it deemed to be a fair apportionment among California, Arizona, and Nevada, of the beneficial consumptive use of water apportioned to the Lower Basin by the Compact, but, in connection with said admission, the State of Nevada states it has not sufficient knowledge, or information upon which to base a belief whether such apportionment was and is fair and equitable to the Lower Basin, therefore denies such allegation, and further the State of Nevada specifically denies said proposed apportionment was and is fair, equitable, or sufficient as therein made to the State of Nevada.

Further answering said Paragraph XXV, the State of Nevada states it has not sufficient knowledge, or information upon which to

base a belief, therefore denies all and singular the allegations contained in that portion of said paragraph beginning with the word "Arizona" in line 5 and ending with the word "Nevada" in line 19, page 28 of said Bill of Complaint.

XX

(a) Answering Paragraphs XXVI of Arizona's Complaint, 72 of California's Answer, and 72 of Arizona's Reply, the State of Nevada has not sufficient knowledge or information upon which to base a belief and therefore denies the same except that the State of Nevada admits that California intends to use water as therein set forth in its Answer, but denies that said State is entitled to or has the right to more than the beneficial consumptive use of 4,400,000 acre-feet of water under Article III(a) of the Compact plus an equitable share of water under Article III(b), when the right to the increased beneficial consumptive use of said water is authoritatively exercised by all the Lower Basin States, plus not more than one half of any excess or surplus water.

(b) The State of Nevada denies that such excess or surplus waters includes the water referred to in Article III(b) of the Compact.

(c) The State of Nevada further denies that California or any Lower Basin State has ever acquired any rights adverse to the rights of the State of Nevada in any water under the Compact by reason of nonuse of waters by the State of Nevada or may in the future acquire any rights adverse to the rights of the State of Nevada in such waters by reason of the nonuse by the State of Nevada.

(d) The State of Nevada further denies that California has any right to increase its diversions and beneficial consumptive use of water above 4,400,000 acre-feet of Article III(a) water, plus an equitable share of water under Article III(b), when the right to the increased beneficial consumptive use of said water is authoritatively exercised by all the Lower Basin States, plus one half of any excess or surplus waters, and by any additional diversion or use of such waters California cannot thereby acquire any rights in derogation of or adverse

to the rights of the State of Nevada without the express official agreement or assent of the State of Nevada.

XXI

Answering Paragraphs XXVII of Arizona's Complaint, 73 of California's Answer, the State of Nevada admits there is a serious controversy between Arizona and California, but denies the other allegations in said Paragraph XXVII of said Complaint. The State of Nevada alleges in this connection that the economic interests of Arizona, California, Nevada, Utah and New Mexico, as signatories to and beneficiaries under the Colorado River Compact, are vitally affected by this controversy.

XXII

Answering Paragraphs XXVIII of Arizona's Complaint and 74 of California's Answer, the State of Nevada admits the allegations in said paragraphs.

XXIII

Answering Paragraph XXIX of Arizona's Bill of Complaint, the State of Nevada admits all and singular the allegations therein contained, and alleges that any State in the Lower Basin is entitled to seek its remedy in this Court and therein pray for the adjudication of its right to the use of the waters of the Colorado River Stream System.

XXIV

Answering the first affirmative defense of California, the State of Nevada alleges that the use of the waters of the Colorado River Stream System by the State of California is subject to and limited by the Colorado River Compact, the Project Act, and the Limitation Act to the quantities of water therein set forth, and that contracts between the United States of America and the various defendant contracting agencies are upon the express condition and with the express understanding that all rights under such contracts are subject to and governed by the Colorado River Compact, which Compact

was approved in Section 13(c) of the Boulder Canyon Project Act.

The State of Nevada further alleges that such contracts do not create in California any right to use more than four million four hundred thousand acre-feet of the waters apportioned to the Lower Basin by Article III(a) of the Colorado River Compact, plus an equitable share of water under Article III(b) when the right to the increased beneficial consumptive use of said water is authoritatively exercised by all the Lower Basin States, plus not more than one half of any excess or surplus water.

The State of Nevada denies the allegations of Paragraph 37(b) of Arizona's Reply alleging that Article III(a) of the Compact apportions certain amounts of water to the respective States of Arizona, California and Nevada and in this connection the State of Nevada alleges that Article III(a) of the Compact makes no apportionment of any kind to any of the Lower Basin States and makes no apportionment whatever except as between the Upper and Lower Basin.

XXV

Answering the Third Affirmative Defense of California, the State of Nevada alleges that all allegations therein as to the alleged appropriative rights of California are immaterial and irrelevant to a determination of the issues in this case for the following reasons:

1. Appropriative rights under California law are not binding upon the United States of America, the State of Nevada, or any other State of the Colorado River System, except the State of California.

2. The rights that California may have at any time to the use of waters of the Colorado River System are now and at all times since the effective date of the Colorado River Compact subject to the terms of said Compact, the Boulder Canyon Project Act and the California Limitation Act.

XXVI

The State of Nevada denies all the allegations, arguments, conclusions or averments in the respective pleadings of the parties which

are at variance with the facts and allegations of this petition of interpleader or in contravention of the rights of the State of Nevada as herein above set forth.

WHEREFORE, The State of Nevada respectfully prays:

1. That the rights of the States of Arizona, California, Nevada, New Mexico, Utah and the United States of America in and to the use of the waters of the Colorado River Stream System be adjudicated, determined and forever set at rest.

2. That the right of the State of Nevada in and to the beneficial consumptive use of 539,100 acre-feet of the water apportioned to the Lower Basin in and by Article III(a) of the Colorado River Compact be confirmed unto the State of Nevada in perpetuity.

3. That this Honorable Court enter its judgment and decree, that the additional one million acre-feet of water set forth and provided in Article III(b) of the Colorado River Compact is water apportioned to the Lower Basin, and be subject to use only when all the Lower Basin States shall have by authoritative Compact or Agreement increased the beneficial consumptive use in said Basin as provided in said Article III(b), at which time the State of Nevada shall be decreed the right to an equitable share thereof.

4. That the State of Nevada shall be decreed the right to its equitable share in and to the beneficial consumptive use of water to be apportioned under Article III(f) of the Colorado River Compact; provided, that the equitable share of the State of Nevada in Article III(b) water and the equitable share of the State of Nevada in Article III(f) water, together with its equitable share in the water apportioned pursuant to Article III(a) of said Compact in the amount of 539,100 acre-feet, shall not be less than 900,000 acre-feet per annum.

5. That the State of Nevada have such other and further relief as the Court may deem proper.

6. The State of Nevada further prays leave to amend this Petition

of Intervention if such amendments become necessary in the course of the pleadings or proceedings in this Cause.

DATED: December 1, 1953.

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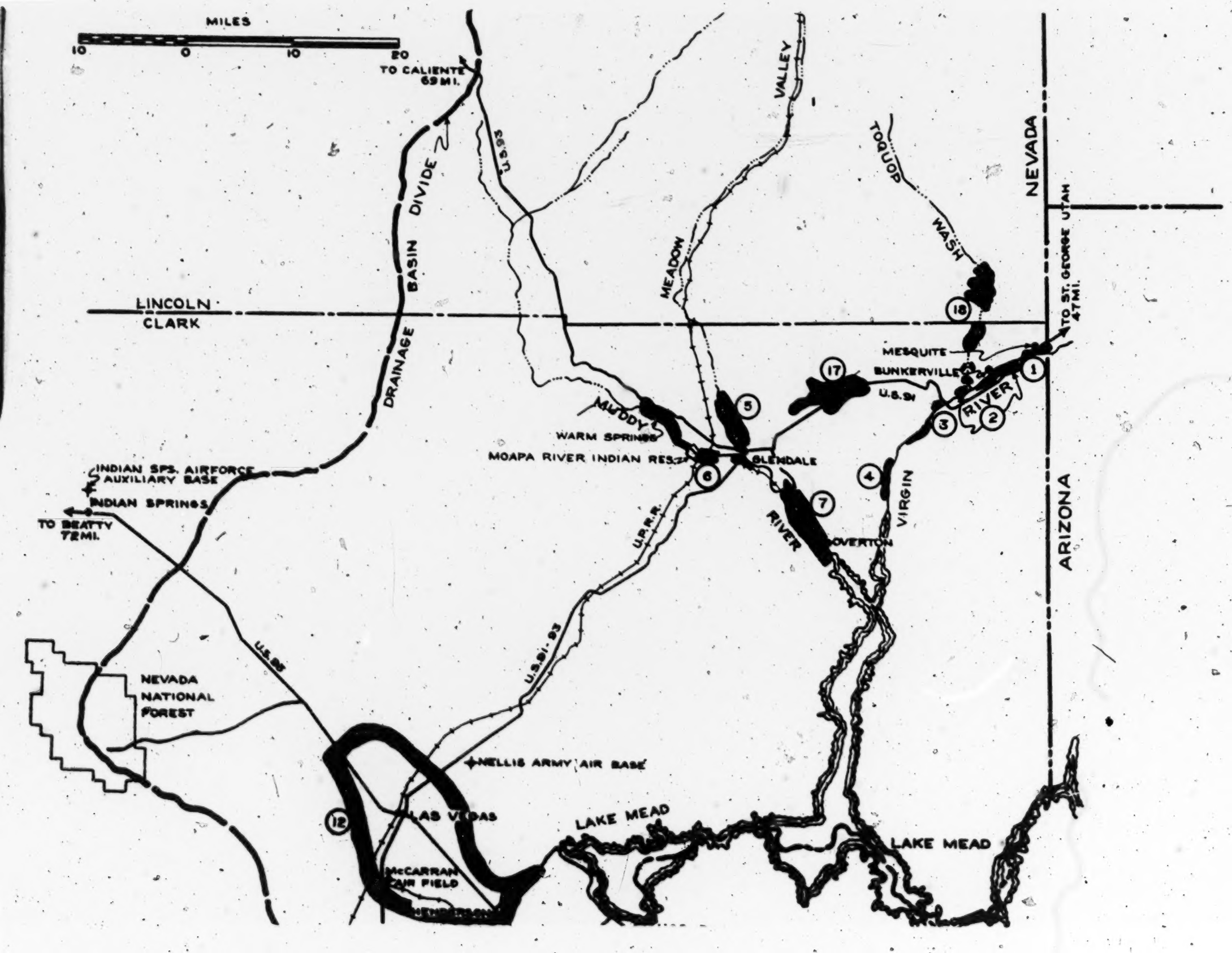
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TO CALIENTE 69 MI.
VALLEY
MEADOW
TODUDD WASH
NEVADA
BASIN DIVIDE
DRAINAGE
LINCOLN
CLARK
TO ST. GEORGE UTAH 47 MI.
MESQUITE
BUNKERVILLE
U.S. 91
RIVER
MUDDY
WARM SPRINGS
MOAPA RIVER INDIAN RES.
GLENDALE
INDIAN SPS. AIRFORCE AUXILIARY BASE
INDIAN SPRINGS
TO BEATTY 72 MI.
U.P.R.R.
VIRGIN
RIVER
OVERTON
ARIZONA
U.S. 95
U.S. 91-93
NEVADA NATIONAL FOREST
NELLIS ARMY AIR BASE
LAS VEGAS
LAKE MEAD
LAKE MEAD
McCARRAN AIR FIELD
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